

BILLING CODE 3190-01-M

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

[Docket No. 301-100a]

Termination of Action and Monitoring: European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of action, monitoring, and request for public comments.

SUMMARY: Pursuant to authority under section 301 of the Trade Act of 1974, as amended, on April 19, 1999, the United States Trade Representative (Trade Representative) imposed 100 percent ad valorem duties on a list of products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body concerning the EC's regime for the importation, sale and distribution of bananas. On April 11, 2001, the United States and the EC announced an understanding in the *Bananas* dispute. Pursuant to that understanding, the EC is taking steps to provide greater market access to U.S. banana distributors, and the Trade Representative is terminating the 100 percent ad valorem duties on the list of EC products. The Trade Representative will monitor the EC's

compliance with the understanding, and in particular, whether the EC modifies certain tariff rate quotas by January 1, 2002. Should the EC fail to do so, the Trade Representative may again take action under Section 301.

DATES: Comments should be submitted by 5:00 p.m. on August 7, 2001. The termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, except that the termination of increased duties on HTS subheading 4911.91.20 is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999.

ADDRESSES: Comments should be submitted to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301-100a, Office of the United States Trade Representative, 1724 F Street, NW, Room 217, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395-3419, for questions concerning procedures for filing comments in response to this notice; Ralph Ives, Assistant U.S. Trade Representative, (202) 395-3430, for questions concerning the *Bananas* case; William Busis, Associate General Counsel, (202) 395-3150, for questions concerning procedures under Section 301; or Yvonne Tomenga, Program Officer, Office of Trade Programs, U.S. Customs Service, (202) 927-0133, for questions concerning entries.

#### SUPPLEMENTARY INFORMATION:

In 1993, the EC adopted a regime governing the importation, sale, and distribution of bananas that was discriminatory and harmed the economic interests of the United States by denying to U.S. companies a major portion of their banana distribution business. WTO dispute settlement panels have confirmed that the EC's banana regime was inconsistent with the EC's obligations under the WTO Agreement. WTO arbitrators have determined that the EC's banana regime has nullified or impaired U.S. benefits under the WTO Agreement in the amount of \$191.4 million per year. As a result, the WTO Dispute Settlement Body authorized the United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of \$191.4 million per year.

Pursuant to the authorization of the WTO Dispute Settlement Body and under the authority of Sections 301 to 309 of the Trade Act of 1974, as amended ("Section 301"), the USTR announced a list of nine EC products that would be subject to a 100 percent rate of duty, effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999. See 64 FR 19,209 (April 19, 1999). Since that time, the United States and the EC have consulted in an effort to resolve the dispute, and the increased duties have remained in place. The procedural and

substantive background of the U.S. investigation under Section 301 and the associated WTO proceedings concerning the EC's banana regime is set forth in prior notices. See 64 FR 19,209 (April 19, 1999); 63 FR 71,665 (Dec. 29, 1998); 63 FR 63,099 (Nov. 10, 1998); 63 FR 56,687 (Oct. 22, 1998); and 63 FR 8248 (Feb. 18, 1998).

On April 11, 2001, the United States and the EC announced an understanding in the dispute. The understanding provides for phased implementation steps. By July 1, 2001, the EC is to adopt a new system of banana licenses based on historic reference periods. By January 1, 2002, the EC will shift an additional 100,000 tons of bananas into a tariff rate quota accessible to bananas of Latin American origin (with respect to which U.S. distributors have a substantial historic share). By January 1, 2006, the EC will introduce a tariff-only regime for banana imports.

Pursuant to the understanding, the United States is to remove increased duties on EC products by July 1, 2001 if the EC completes the first phase of implementation (adoption of historic reference periods). The understanding also provides that the United States may reimpose increased duties if the EC does not complete the second phase of implementation (modifying its tariff rate quotas) by January 1, 2002.

The Office of the United States Trade Representative (USTR) has been monitoring the EC's compliance with the understanding. USTR confirms that the EC has adopted a new system of banana licenses based on historic reference periods and has issued licenses in accordance with that system. As a result, U.S. banana distributors have obtained additional access to the EC market.

Under Section 307 of the Trade Act of 1974, the Trade Representative, subject to the specific direction, if any, of the President, may modify or terminate action taken under Section 301 if, among other things, the foreign country “is taking satisfactory measures to grant the rights of the United States under a trade agreement” or “has agreed to eliminate or phase out the act, policy, or practice” that is the subject of the Section 301 investigation. Section 301(a)(2)(B)(i) and (ii) of the 1974 Trade Act; Section 307(a)(1)(A) of the 1974 Trade Act. The EC’s entry into the understanding, combined with its completion of the first phase of implementation, indicates that the EC is taking satisfactory measures to grant the rights of the United States under the WTO Agreement and has agreed to eliminate or phase out its discriminatory banana regime. Accordingly, the Trade Representative has decided to terminate the action previously taken under Section 301 to increase duties on a list of nine products of certain EC member States.

As set out in the Annex to this notice, the termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, with the exception of the increased duties imposed on *Pictures, designs, and photographs, . . . Lithographs* (HTS subheading 4911.91.20). As illustrated by notices published in the Customs Bulletin, there was widespread confusion in the importing community prior to the imposition of the increased duties with regard to whether certain pictures, designs, and photographs should be classified as *Pictures, designs, and photographs, . . . Lithographs* (HTS subheading 4911.91.20) or as *Pictures, designs, and photographs, . . . Other* (HTS subheading 4911.91.40). *See Revocation of Treatment or Ruling Relating to the Classification of Offset Printing Posters*, 34 Customs Bulletins and Decisions 41 &

42, page 141 (Oct. 15, 2000). As a result, importers who had been for years entering goods under subheading 4911.91.40 found that their goods instead fell within the scope of subheading 4911.91.20 and were subject to 100 percent duties. To address this situation, the Trade Representative has determined that the increased duties imposed on *Pictures, designs, and photographs, . . . Lithographs* (HTS subheading 4911.91.20) should be terminated with respect to articles entered, or withdrawn from warehouse, for consumption on or after March 3, 1999 – the initial effective date of the increased duties.

Under Section 306 of the Trade Act, USTR will continue to monitor the EC's implementation of the understanding. As noted, by January 1, 2002 the EC is scheduled to shift an additional 100,000 tons into a tariff rate quota accessible to bananas of Latin American origin. Should the EC fail to complete this implementation step, the Trade Representative may again take action under Section 301.

Prior to terminating the Section 301 action, USTR consulted with the domestic industry concerned and at this time is providing an opportunity for public comment on this action under Section 307 of the Trade Act.

### **Public Comments**

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before 5:00 p.m. on August 7, 2001. Comments must be in English and provided in

twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301-100a, Office of the United States Trade Representative, 1724 F Street, NW, Room 217, Washington, DC 20508. Comments will be placed in a file (Docket 301-100a) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ``BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW, Washington, DC 20508.

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William Busis

Chairman, Section 301 Committee

## Annex

- I. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, the imposition of 100 percent *ad valorem* tariffs as provided in subheadings 9903.08.04 (affecting articles in subheading 3307.30.50), 9903.08.07 (affecting articles in subheading 4202.22.15), 9903.08.08 (affecting articles in subheading 4202.32.10), 9903.08.09 (affecting articles in subheading 4805.50), 9903.08.10 (affecting articles in subheading 4819.20), 9903.08.13 (affecting articles in subheading 6302.21.90), 9903.08.14 (affecting articles in subheading 8507.20.80), and 9903.08.15 (affecting articles in subheading 8516.71) of the Harmonized Tariff Schedule of the United States (HTS) is terminated.
- II. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after March 3, 1999, the imposition of 100 percent *ad valorem* tariffs as provided in subheading 9903.08.11 (affecting articles in subheading 4911.91.20 (lithographs)) of the HTS is terminated. This termination shall apply to all merchandise classifiable under subheading 9903.08.11 of the HTS entered, or withdrawn from warehouse, for consumption on or after March 3, 1999 for which unliquidated entries or entries subject to timely protest are pending before the United States Customs Service.
- III. Effective July 1, 2001, the instruction in the notice of April 19, 1999, 64 FR 19,209, that “Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or



after April 19, 1999 must be admitted as ‘privileged foreign status’ as defined in 19 CFR 146.41” is terminated.